

Wednesday, February 1, 2006

The Board met at its offices at 450 N Street, Sacramento, at 9:32 a.m., with Mr. Chiang, Chair, Mr. Parrish, Vice Chair, Ms. Yee and Mr. Leonard present, Ms. Mandel present on behalf of Mr. Westly in accordance with Government Code section 7.9.

### SALES AND USE TAX APPEALS HEARINGS

Tareq Sulaiman and Kathy Sulaiman, 249880 (GH)

10-1-00 to 12-31-02, \$97,444.37 Tax, \$9,776.44 Penalty

For Petitioner: Tareq Sulaiman, Taxpayer

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether audited taxable sales are overstated because audited costs of taxable merchandise to be marked up are excessive and insufficient deduction made for tax-paid purchases resold.

Whether the 10 percent penalty imposed for negligence should be deleted.

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Balvir Singh and Charan Singh, 223362 (KH)

7-1-99 to 6-30-02, \$28,683.27 Tax

For Petitioner: Hargit Singh, Taxpayer

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether the audited understatement of reported taxable sales is excessive.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Stephen S. Hiller, 240369, 240370 (UT)

7-7-98, \$72,189.00 Tax

3-9-01, \$303,988.00 Tax

For Petitioner: Abe Golomb, Representative

Warren Alston, Representative

For Sales and Use Tax Department: Carla Caruso, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner's purchase and use for the subject aircraft are exempt from use tax because the aircraft were used principally in common carriage operations.

Whether petitioner has established reasonable cause to abate the amnesty penalty that will apply to Case ID: 240369.

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

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Mustafa Mufit Aybar, 265609 (KH)

2-1-03 to 4-11-03, \$1,121.44 Claim for Refund

For Claimant:

Mustafa Mufit Aybar, Taxpayer

For Sales and Use Tax Department:

Cary Huxsoll, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether claimant is entitled to a refund of the amount levied from his bank account as a partner for the taxes, interest, and penalties owed by Aybarcar Auto Repair.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

**PUBLIC HEARING****Property Taxes – State Assessee Presentations on Capitalization Rates & Other Factors Affecting Values**

Stanley Siu, Chief, Valuation Division, Property and Special Taxes Department, was available to answer questions regarding 1) state assessee's presentations on capitalization rates and other factors and procedures affecting 2005-06 values of California state-assessed public utilities and railroads; and, 2) private railroad car assessee's presentations on factors and procedures affecting 2005-06 taxable values of private railroad cars.

Speakers: Peter Michaels, Cooper, White and Cooper, spoke on behalf of State-assessed gas/electric, inter-county pipeline and railroad companies.

**LEGAL APPEALS MATTERS, CONSENT**

With respect to the Legal Appeals Matters Consent Agenda, upon a single motion of Ms. Mandel, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board made the following order:

Stephen J. Heuer, 258408 (GH)

7-1-01 to 12-31-03, \$167,050.00 Tax, \$16,705.00 Failure to File Penalty

Action: Redetermine as recommended by the Appeals Division.

**CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT**

The Board deferred consideration of the following matters: *John T. Berg, 300516*; and, *Geoffrey K. Wascher, 307238*.

With respect to the Corporate Franchise and Personal Income Tax Matters Consent Agenda, upon a single motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board made the following orders:

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Corey L. Allen and Cheryl Bentyne, 286713

1997, \$7,086.34 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

John T. Berg, 300516

1984, \$778.00 Claim for Refund

Action: The Board deferred consideration of this matter.

Butch Berry, 296582

2002, \$561.25 Assessment

Action: Sustain the action of the Franchise Tax Board and impose a \$750.00 frivolous appeal penalty.

Larry L. Bloom, 296926

2002, \$505.00 Tax, \$252.50 Penalties

Action: Sustain the action of the Franchise Tax Board and impose a \$1,000.00 frivolous appeal penalty.

Charles C. Cahn, Jr. and Jane Cahn, et al., 305566

Charles C. Cahn, Jr. and Jane Cahn, 305566

1993, \$5,537.00 Claim for Refund

1995, \$17,501.00 Claim for Refund

Kenneth Abramowitz and Nira Abramowitz, 305568

1993, \$2,595.00 Claim for Refund

1996, \$6,255.00 Claim for Refund

Paul Bagnoli and Lauren Bagnoli, 305569

1995, \$1,832.00 Claim for Refund

1996, \$2,406.00 Claim for Refund

Gregory Sawers and Jill Sawers, 305570

1996, \$3,190.00 Claim for Refund

Marc Mayer and Meera Mayer, 305577

1995, \$2,489.00 Claim for Refund

Jonathon Mann and Debra Mann, 305584

1995, \$1,980.00 Claim for Refund

Marilyn Fedak, 305585

1995, \$9,318.00 Claim for Refund

Alan Feld and Robin Feld, 305586

1995, \$1,911.00 Claim for Refund

Roger Hertog and Susan Hertog, 305589

1995, \$46,849.00 Claim for Refund

Paul Bernstein, 305591

1995, \$11,940.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

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Kennan Cline, 309816

2002, \$762.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Coffee Partners, L.P., 288689

1993 to 2000, \$4,037.39 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Thomas R. DeLong, 297163

2002, \$1,060.25 Assessment

Action: Sustain the action of the Franchise Tax Board and impose a \$5,000.00 frivolous appeal penalty.

Brooks Dunlap and Helen Dunlap, 281165

1993, \$15,247.32 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Marshall Finch and Helen Finch, 258525

1998, \$17,974.89 Claim for Refund

1990, \$5,569.82 Claim for Refund

Action: Modify the action of the Franchise Tax Board.

Galvantech, Inc., 288289

1999, \$107,009.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Matthew J. Gaspar and Elizabeth R. Gaspar, 301573

2003, \$71.99 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Mark J. Levin, 295818

2002, \$2,213.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Kenneth A. Minkus, 304417

1992 and 1995, \$10,422.96 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Brooks Morgan, 305124

1996, \$4,384.49 Assessment

1997, \$5,654.80 Assessment

1998, \$1,629.48 Assessment

2000, \$3,557.67 Assessment

2002, \$765.25 Assessment

Action: Sustain the action of the Franchise Tax Board.

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Oceanic Bank, 286855

1998, \$18,284.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Natasha J. Parsakia, 303402

2002, \$1,443.58 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Juan C. Reynoso, 298618

2002, \$931.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Jesse J. Roth, 294194

1992, \$97,470.05 Assessment

Action: Sustain the action of the Franchise Tax Board.

Kevin Spicer, 300904

1995, \$1,235.68 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Charles E. Travis, 219338, 250420

2000, \$1,460.00 Tax, \$365.00 Late Filing Penalty

2001, \$12,244.00 Tax, \$1,485.25 Late Filing Penalty, \$3,280.00 Notice and Demand Penalty

Action: Sustain the action of the Franchise Tax Board and impose a \$2,500.00 frivolous appeal penalty.

Michael Van Wagner and Sally Ann Crain, 289997

2001, \$721.94 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Mary Olivia Vargo, 294752

2000, \$1,837.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Ada D. Voth, 308142

2002, \$1,101.00 Assessment/Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Geoffrey K. Wascher, 307238

1983, \$165.00 Claim for Refund

Action: The Board deferred consideration of this matter.

Douglas L. Black and Patricia A. Black, 268563

1999, \$5,204.00 Assessment

2000, \$5,956.00 Assessment

2001, \$6,135.00 Assessment

2002, \$6,498.00 Assessment

Action: Deny the petition for rehearing.

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**HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, CONSENT**

With respect to the Homeowner and Renter Property Tax Assistance Matters Consent Agenda, upon a single motion of Ms. Yee, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board made the following orders:

Isaac L. Chan, 313197

2004, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Soon Ok Choi, 306361

2004, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Starquet K. Edwards-Crosby, 310459

2004, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Alex Elshirbiny, 295490

2001, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Sharon Hochderffer, 298071

2004, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Cecilia Hood, 298063

2004, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Kit Chun Chow Huang, 298082

2004, \$1.00 or more

Action: Reverse the action of the Franchise Tax Board, granting appellant's claim for assistance in the amount of \$101.25.

Cassandra McKissack, 310013

2004, \$340.00

Action: Sustain the action of the Franchise Tax Board.

Mohammad Yunus Naviwala and Kulsum Yunus Naviwala, 308813

2004, \$347.50

Action: Sustain the action of the Franchise Tax Board.

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Deborah Quick, 300487

2004, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Alta M. Rymer, 296234

2004, \$320.00

Action: Sustain the action of the Franchise Tax Board.

Yvonne Sterling, 309084

2002, \$28.84

Action: Sustain the action of the Franchise Tax Board.

Loc Tran, 311710

2004, \$1.00 or more

Action: Modify the action of the Franchise Tax Board consistent with respondent's concession to pay \$28.96.

**SALES AND USE TAX MATTERS, REDETERMINATIONS, RELIEF OF  
PENALTIES/INTEREST AND DENIALS OF CLAIMS FOR REFUND, CONSENT**

With respect to the Sales and Use Tax Matters, Redeterminations, Relief of Penalties/Interest and Denials of Claims for Refund, Consent Agenda, upon a single motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board made the following orders:

Faramarzipour USA, Inc., 255916 (AA)

1-1-99 to 12-31-01, \$156,312.92

Action: Approve the redetermination as recommended by staff.

Eurodesign Cabinet, Inc., 293205 (EH)

1-1-01 to 12-31-01, \$71,503.62

Action: Approve the redetermination as recommended by staff.

Advantest America, Inc., 246244 (GH)

10-1-99 to 9-30-02, \$133,351.63

Action: Approve the redetermination as recommended by staff.

Unisys Corporation, 244383 (OHB)

10-1-96 to 12-31-00, \$2,073,785.26

Action: Approve the redetermination as recommended by staff.

Phase Shift Technology, Inc., 224874 (OH)

1-1-93 to 12-31-00, \$503,562.99

Action: Approve the redetermination as recommended by staff.

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Richard Preston Apgar, 218835 (FH)

10-1-93 to 12-30-00, \$177,463.46

Action: Approve the redetermination as recommended by staff.

Infineon Technologies Corporation, 282020 (GH)

4-1-99 to 6-30-02, \$201,842.12

Action: Approve the redetermination as recommended by staff.

Castro-Krause's Industries, Inc., 219178 (EA)

10-1-02 to 12-31-02, \$54,503.80

Action: Approve the redetermination as recommended by staff.

Waterman Industries, Inc., 282011 (KHO)

4-1-01 to 2-9-04, \$890,961.94

Action: Approve the redetermination as recommended by staff.

Intellution, Inc., 308721 (OHB)

7-1-01 to 12-31-04, \$53,959.33

Action: Approve the redetermination as recommended by staff.

Tessengerlo Kerley, Inc., 290113 (OH)

7-1-00 to 3-31-04, \$464,612.11

Action: Approve the redetermination as recommended by staff.

Whole Foods Market California, Inc., 333366 (GH)

2-1-05 to 2-28-05, \$51,939.67

Action: Approve the relief of penalty/interest as recommended by staff.

Kern Oil &amp; Refining Company, 333303 (ARH)

11-1-04 to 11-30-04, \$211,667.39

Action: Approve the relief of penalty/interest as recommended by staff.

Levy Premium Food Service LP, 333319 (AS)

4-1-05 to 4-30-05, \$56,510.22

Action: Approve the relief of penalty/interest as recommended by staff.

Dal-Tile SSC West, Inc., 333242 (OHC)

4-1-05 to 6-15-05, \$199,210.92

Action: Approve the relief of penalty/interest as recommended by staff.

Pommon's Tower Market, Inc., 172716 (BH)

7-1-00 to 8-6-00, \$63,751.00

Action: Approve the denial of claim for refund as recommended by staff.



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Martin Lee Manning, 242309 (AC)

1-1-97 to 3-31-99, \$61,008.83

Action: Approve the denial of claim for refund as recommended by staff.

Leiner Health Products, LLC, 305492 (AS)

4-1-03 to 3-31-04, \$108,759.00

Action: Approve the denial of claim for refund as recommended by staff.

### **SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, CONSENT**

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang not participating in accordance with Government Code section 87105 in *Polycom, Inc., 308489*; and, *Johnson & Johnson Health Care System, 164608*; Ms. Mandel not participating in accordance with Government Code section 87105 in *GE Warranty Management, Inc., 262559*; *General Electric Capital Corporation, 224054*; and, *Johnson & Johnson Health Care System, 164608*; the Board made the following orders:

Scrantom Engineering, Inc., 332681 (EAA)

10-1-01 to 11-14-03, \$153,072.27

Action: Approve the credit and cancellation as recommended by staff.

Pivot Interiors, Inc., 333506 (GH)

7-1-05 to 9-30-05, \$763,629.00

Action: Approve the credit and cancellation as recommended by staff.

Leiner Health Products, Inc., 187836 (AS)

10-1-97 to 9-30-00, \$452,802.11

Action: Approve the credit and cancellation as recommended by staff.

Jlacredit Corporation, 217944 (OHB)

10-1-96 to 7-31-00, \$3,100,849.31

Action: Approve the credit and cancellation as recommended by staff.

Circle K Stores, Inc., 330368 (OH)

1-1-97 to 3-31-00, \$5,885,597.34

Action: Approve the credit and cancellation as recommended by staff.

Castro-Krause's Industries, Inc., 207287 (EA)

4-1-02 to 9-30-02, \$629,626.29

Action: Approve the credit and cancellation as recommended by staff.

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J's Tires, Inc., 304919 (GH)

1-1-97 to 3-31-00, \$75,893.84

Action: Approve the credit and cancellation as recommended by staff.

L. A. Community College District, 331497 (AS)

1-1-01 to 12-31-03, \$141,812.79

Action: Approve the refund as recommended by staff.

The California Credit Union, 262414 (AC)

1-1-01 to 12-31-02, \$77,232.46

Action: Approve the refund as recommended by staff.

Contractors Wardrobe, Inc., 327435 (AR)

7-1-01 to 12-31-01, \$60,139.47

Action: Approve the refund as recommended by staff.

Earle M. Jorgensen Company, 333978 (AA)

4-1-00 to 12-31-02, \$105,816.76

Action: Approve the refund as recommended by staff.

Viewsonic Corporation, 330131 (AP)

10-1-00 to 6-30-05, \$98,687.48

Action: Approve the refund as recommended by staff.

Airflite, Inc., 311541 (AA)

10-1-00 to 12-31-02, \$69,442.20

Action: Approve the refund as recommended by staff.

Web Service Company, Inc., 308496 (AS)

10-1-00 to 3-31-04, \$64,020.64

Action: Approve the refund as recommended by staff.

Chevron U.S.A., Inc., 331498 (BH)

10-1-01 to 12-31-04, \$144,363.18

Action: Approve the refund as recommended by staff.

Good View Roofing Build Sup Corporation, 328904 (BH)

4-1-05 to 6-30-05, \$54,544.02

Action: Approve the refund as recommended by staff.

Fireside Bank, 332024 (CH)

4-1-05 to 6-30-05, \$1,830,627.02

Action: Approve the refund as recommended by staff.

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Callaway Golf Company, 333980 (FHB)

7-1-01 to 12-31-02, \$232,993.19

Action: Approve the refund as recommended by staff.

Tustin Community Bank, 261240 (EA)

1-1-01 to 6-30-04, \$74,563.25

Action: Approve the refund as recommended by staff.

Professional Hospital Supply, Inc., 296873 (EH)

10-1-01 to 3-31-05, \$127,496.69

Action: Approve the refund as recommended by staff.

Legato Network Services, Inc., 331262 (GH)

7-1-01 to 10-31-03, \$81,952.75

Action: Approve the refund as recommended by staff.

Polycom, Inc., 308489 (CH)

10-1-01 to 9-30-04, \$88,522.95

Action: Approve the refund as recommended by staff. Mr. Chiang not participating in accordance with Government Code section 87105.

Jeffrey Jon Ivarson, 304491 (JH)

1-1-02 to 3-31-05, \$77,819.09

Action: Approve the refund as recommended by staff.

The Golden 1 Credit Union, 328560 (KH)

1-1-05 to 3-31-05, \$147,456.32

Action: Approve the refund as recommended by staff.

Hyundai Motor Finance Company, 185770 (EA)

7-1-98 to 3-31-00, \$166,816.25

Action: Approve the refund as recommended by staff.

Fresno Truck Center, 300322 (KH)

10-1-03 to 12-31-03, \$53,957.17

Action: Approve the refund as recommended by staff.

Ford Motor Company, 217289 (OHA)

10-1-98 to 12-31-02, \$5,101,281.13

Action: Approve the refund as recommended by staff.

MKS Instruments, Inc., 184483 (OHB)

4-1-99 to 12-31-02, \$55,425.60

Action: Approve the refund as recommended by staff.

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Leiner Health Products, Inc., 196285 (AS)

10-1-97 to 9-30-00, \$454,110.96

Action: Approve the refund as recommended by staff.

Toys R Us, Inc., 331400 (OHB)

6-27-99 to 12-28-02, \$169,378.63

Action: Approve the refund as recommended by staff.

Daifuku America Corporation, 316912 (OHA)

1-1-05 to 3-31-05, \$110,062.56

Action: Approve the refund as recommended by staff.

Jlacredit Corporation, 331967 (OHB)

10-1-96 to 7-31-00, \$541,221.63

Action: Approve the refund as recommended by staff.

Chevron Stations, Inc., 56869 (CH)

7-1-97 to 12-31-04, \$477,987.18

Action: Approve the refund as recommended by staff.

Boston Scientific Corporation, 249947 (OHB)

10-1-00 to 3-31-05, \$60,193.93

Action: Approve the refund as recommended by staff.

Wayne-Dalton Corporation, 266402 (OHA)

4-1-01 to 12-31-03, \$133,444.61

Action: Approve the refund as recommended by staff.

Reebok International, Ltd., 330964 (OHB)

4-1-00 to 12-31-03, \$77,073.02

Action: Approve the refund as recommended by staff.

Kern River Gas Transmission Company, 296979 (OH)

1-1-01 to 6-30-03, \$301,316.28

Action: Approve the refund as recommended by staff.

Univar USA, Inc., 138536 (OH)

10-1-98 to 6-30-00, \$147,480.25

Action: Approve the refund as recommended by staff.

Carrier Commercial Refrig., Inc., 329570 (OHA)

4-1-05 to 5-27-05, \$50,405.57

Action: Approve the refund as recommended by staff.

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Mercedes-Benz USA, LLC., 325727 (KH)

8-16-05 to 9-20-05, \$325,827.00

Action: Approve the refund as recommended by staff.

Staples the Office Superstore, Inc., 331259 (OHB)

7-1-01 to 12-31-02, \$75,745.33

Action: Approve the refund as recommended by staff.

Providian Bancorp Services, 333981 (BH)

1-1-01 to 12-31-02, \$54,242.90

Action: Approve the refund as recommended by staff.

Abbott Laboratories, 271445 (OHA)

7-1-00 to 12-31-03, \$475,349.56

Action: Approve the refund as recommended by staff.

American Thieme Corporation, 311528 (OHA)

1-1-04 to 12-31-04, \$94,782.50

Action: Approve the refund as recommended by staff.

Infineon Technologies Corporation, 153097 (GH)

4-1-99 to 12-31-01, \$202,312.65

Action: Approve the refund as recommended by staff.

GE Warranty Management, Inc., 262559 (OHC)

10-1-01 to 12-31-03, \$297,745.38

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105.

Cintas Corporation No. 2, 328339 (OHA)

4-1-01 to 12-31-02, \$64,426.43

Action: Approve the refund as recommended by staff.

US Bank NA, 266413 (OHA)

1-1-03 to 9-30-04, \$134,476.96

Action: Approve the refund as recommended by staff.

RDO Agriculture Equipment Company, 224775 (OHA)

1-1-01 to 12-31-02, \$344,894.82

Action: Approve the refund as recommended by staff.

Spirent Communications, Inc., 207962 (AC)

1-1-01 to 12-31-03, \$85,682.03

Action: Approve the refund as recommended by staff.

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F. G. Edwards &amp; Company, 331896 (KH)

4-1-02 to 3-31-05, \$121,593.06

Action: Approve the refund as recommended by staff.

City of Pasadena, 332987 (AP)

4-1-03 to 6-30-03, \$672,085.61

Action: Approve the refund as recommended by staff.

General Electric Capital Corporation, 224054 (OHC)

10-1-01 to 3-31-02, \$213,578.24

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105.

Cedars-Sinai Medical Center, 196276 (AS)

10-1-99 to 12-31-02, \$89,040.86

Action: Approve the refund as recommended by staff.

Johnny Quik Food Stores, Inc., 303702 (KHO)

4-1-00 to 3-31-03, \$59,767.57

Action: Approve the refund as recommended by staff.

Komori America Corporation, 311039 (OHA)

10-1-03 to 12-31-03, \$82,341.40

Action: Approve the refund as recommended by staff.

Union Ice GP, Inc., 318619 (AA)

7-1-02 to 12-31-04, \$64,317.30

Action: Approve the refund as recommended by staff.

Johnson &amp; Johnson Health Care System, 164608 (OHB)

1-1-99 to 9-30-04, \$281,347.54

Action: Approve the refund as recommended by staff. Mr. Chiang and Ms. Mandel not participating in accordance with Government Code section 87105.

Universal Sodexho, 263741 (GH)

10-1-03 to 3-31-04, \$67,763.70

Action: Approve the refund as recommended by staff.

Eric Scott Marriott, 309835 (FHB)

5-16-02 to 12-31-04, \$84,267.15

Action: Approve the refund as recommended by staff.

MHI Injection Molding Machinery, Inc., 317040 (OHA)

1-1-04 to 6-30-04, \$50,092.78

Action: Approve the refund as recommended by staff.

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Barclays Global Investors, NA, 327439 (BH)

1-1-02 to 3-31-05, \$75,668.23

Action: Approve the refund as recommended by staff.

### **SPECIAL TAXES MATTERS, REFUNDS, CONSENT**

With respect to the Special Taxes Matters, Refunds, Consent Agenda, upon a single motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang not participating, the Board made the following order:

Trepco Imports & Distribution Ltd, 330674 (ET)

10-13-05 to 10-13-05, \$186,881.16

Action: Approve the refund as recommended by staff. Mr. Chiang not participating.

### **LEGAL APPEALS MATTERS, ADJUDICATORY**

Speaker: Robert E. Cendejas, Attorney, spoke regarding *Nelson Shane Garrett and Maxim Khokhlov, 235401*.

Modern Mold International, Inc. 46790, 151920 (FHB)

10-1-95 to 12-31-98, \$5,209,287.00 Claim for Refund

1-1-99 to 6-30-00, \$2,204,963.00 Claim for Refund

Internet Design Technologies, LLC, 104735, 202260 (FHB)

7-1-00 to 9-30-00, \$585,025.00 Claim for Refund

7-1-00 to 6-30-00, \$585,025.00 Claim for Refund

Considered by the Board: September 1, 2005

Contribution Disclosures pursuant to Government Code section 15626: No disqualifying contributions were disclosed.

Action: Upon motion of Mr. Parrish, seconded by Mr. Leonard and duly carried, Mr. Chiang, Mr. Parrish and Mr. Leonard voting yes, Ms. Yee and Ms. Mandel voting no, the Board ordered that the petition for rehearing be granted.

Nelson Shane Garrett and Maxim Khokhlov, 235401 (AS)

10-1-99 to 12-31-02, \$1,606,272.19 Tax

Considered by the Board: November 15, 2005

Contribution Disclosures pursuant to Government Code section 15626: No disqualifying contributions were disclosed.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang voting no, Mr. Parrish abstaining, the Board ordered that the petition be granted and referred the issue to the Business Taxes Committee.

Mohammad Abdizadeh and William G. Morschauser, 206397 (EH)

1-1-99 to 11-1-01, \$55,058.80 Tax, \$5,308.31 Negligence Penalty, \$87.67 Failure to File Penalty

Considered by the Board: September 21, 2005

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Wednesday, February 1, 2006

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

### **CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, ADJUDICATORY**

Billy Wayne Blanks and Gayle H. Blanks, 268581

1998, \$663,038.00 Assessment

1999, \$987,125.00 Assessment

BG Star Productions, 268579

1998, \$112,394.00 Assessment

1999, \$62,250.00 Assessment

Considered by the Board: December 13, 2005

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board adopted a decision sustaining the action of the Franchise Tax Board as recommended by staff based on the finding that there was an agreement in place as of August 1, 1998 and the Franchise Tax Board properly calculated the tax.

### **TAX PROGRAM NONAPPEARANCE MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE**

#### **PROPERTY TAX MATTERS**

##### **Audits**

EWI Holdings, Inc. (8021)

2004-2005, \$100,000.00 Escaped Assessment, \$11,400.00 Penalties, \$17,100.00 In-lieu Interest

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Mr. Leonard voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the audit escaped assessment for 2004, plus penalties and in-lieu interest, and an excessive assessment for 2005, as recommended by staff.

##### **Board Roll Changes**

2002, 2003 and 2004 Board Rolls of State-Assessed Property

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Mr. Leonard voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board approved Roll Correction Batch Roster 05-04 containing one change each to the 2002, 2003 and 2004 Board Rolls of State-Assessed Property as recommended by staff (Exhibit 2.1).

Exhibits to these minutes are incorporated by reference.



Wednesday, February 1, 2006

#### OFFERS-IN-COMPROMISE RECOMMENDATIONS

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board approved the Offers in Compromise of *Afshin, Inc.*; *Leo Altschuler*; *Patricia Dennis*; *Caroline Kim*; *Shmuel Krampf*; and, *Jesus Nunez and Margarita Nunez*; as recommended by staff.

#### ADMINISTRATIVE SESSION

##### ADMINISTRATIVE MATTERS, CONSENT

With respect to the Administrative Matters, Consent Agenda, upon a single motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board made the following orders:

Action: Adopt the following resolutions extending its best wishes on their respective retirements and its appreciation for their service to the State Board of Equalization and the State of California (Exhibit 2.2).

Nancy Alvaro, Associate Tax Auditor, Van Nuys District Office  
Lucha Duarte, Tax Technician III, Out-of-State District Office  
Ann Edwards, Associate Programmer Analyst, Headquarters  
Daniel Ellsberry, Associate Tax Auditor, West Covina District Office  
Julia Escobar, Tax Technician III, Riverside District Office  
Helen M. Fulkerson, Personnel Supervisor I, Personnel Management Division,  
Headquarters  
Linda Goodman, Associate Tax Auditor, Stockton Branch Office  
Karen G. Howard, Supervising Tax Auditor I, Santa Rosa District Office  
Marguerite Kuhlman, Office Technician, Chicago Area Office  
Cynthia Lewis, Tax Technician II, Santa Ana District Office  
Robert Sherburne, Staff Services Manager II, Contract and Procurement Section,  
Headquarters  
Judith A. Staub, Associate Personnel Analyst, Personnel Management Division,  
Headquarters

Action: Adopt a resolution honoring Skip Thomson, who retired as the Solano County Assessor/Recorder on December 2, 2005, extending its best wishes on his retirement and its appreciation for his service to Solano County, the State Board of Equalization, and the people of the State of California (Exhibit 2.3).

Action: Approve the Board Meeting Minutes of August 31-September 1, 2005; September 20-21, 2005; October 25, 2005; November 1, 2005; November 15, 2005; and, December 13, 2005.

Action: Approve the 2006 Timber Advisory Committee Membership (Exhibit 2.4).

Wednesday, February 1, 2006

**BOARD COMMITTEE REPORTS****Legislative Committee**

Action: Upon motion of Ms. Mandel, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board approved the Legislative Committee report (Exhibit 2.5).

**Customer Services and Administrative Efficiency Committee**

Action: Upon motion of Ms. Mandel, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board approved the Customer Services and Administrative Efficiency Committee report (Exhibit 2.6).

**Business Taxes Committee**

Action: Upon motion of Ms. Mandel, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board approved the Business Taxes Committee report (Exhibit 2.7).

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD  
FEBRUARY 1, 2006**

Balvir Singh and Charan Singh, 223362 (KH)

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Tareq Sulaiman and Kathy Sulaiman, 249880 (GH)

Final Action: The Board deferred consideration of this matter.

Stephen S. Hiller, 240369, 240370 (UT)

Final Action: Mr. Parrish moved that the petition be granted. The motion was seconded by Mr. Leonard but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Mr. Chiang, Ms. Yee and Ms. Mandel voting no.

Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Mr. Chiang, Ms. Yee and Ms. Mandel voting yes, Mr. Parrish and Mr. Leonard voting no, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

**SALES AND USE TAX APPEALS HEARING**

A. Diamond Production, Inc., 36630 (BH)

7-1-91 to 12-31-96, \$1,009,810.76 Tax, \$00.00 Fraud Penalty

For Petitioner: Appearance Waived

For Sales and Use Tax Department: Tim Treichelt, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

**Wednesday, February 1, 2006**

Issues: Whether the evidence establishes that petitioner is entitled to further deductions for exempt sales in interstate commerce from its retail stores.

Whether the evidence establishes that the unreported taxable sales made under the “We Pay Your Sales Tax” campaign are sales tax-included.

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARING HELD  
FEBRUARY 1, 2006**

Mustafa Mufit Aybar, 265609 (KH)

Final Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

**ANNOUNCEMENT OF CLOSED SESSION**

The Board recessed at 11:24 a.m. and reconvened immediately in closed session with Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel present.

**CLOSED SESSION**

The Board met to discuss pending litigation (Govt. Code § 11126(e)), settlements (R&T Code §§ 6901, 7093.5, 30459.1 and 50156.11) and personnel matters (Govt. Code § 11126(a)).

The Board recessed at 11:59 a.m. and reconvened immediately in open session with Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel present.

The Board adjourned at 12:00 p.m. in memory of the following: Ernie Bernardi, Former Los Angeles City Council Member; Lesley Devine, Member of the Calabasas City Council; Colonel Young Oak Kim, World War II hero; and, Corretta Scott King, wife of the late Rev. Martin Luther King, Jr.

*The foregoing minutes are adopted by the Board on March 29, 2006.*

Note: The following matters were removed from the calendar prior to the meeting: *Kam Yuen International, Inc., 216737*; and, *Chief Counsel Matter—Board Policy on Impact of Litigation on Appeals – Recommendation*.